ORIGINAL

LAW OFFICES
LEVENTHAL, SENTER & LERMAN
SUITE 600
2000 K STREET, N.W.
WASHINGTON, D.C. 20006-1809

NORMAN P. LEVENTHAL
MEREDITH S. SENTER, JR.
STEVEN ALMAN LERMAN
RAUL R. RODRIGUEZ
DENNIS P. CORBETT
BRIAN M. MADDEN
BARBARA K. GARDNER
STEPHEN D. BARUCH
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NANCY A. ORY
WALTER P. JACOB
LINDA D. FELDMANN
RENÉE L. ROLAND
ROSS G. GREENBERG*
JOHN D. POUTASSE**
MATTHEW H. BRENNER‡

* ADMITTED NJ ONLY
**ADMITTED MD ONLY
‡ ADMITTED CA ONLY

TELEPHONE
(202) 429-8970

TELECOPIER
(202) 293-7783

SENIOR COMMUNICATIONS CONSULTANT
MORTON I. HAMBURG

February 28, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

Re: MM Docket No. 95-176
Closed Captioning and Video Description

Dear Mr. Caton:

Transmitted herewith on behalf of The Motion Picture Association of America, Inc. are an original and nine copies of its Comments on the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding (FCC 97-4 released January 17, 1997).

Also enclosed are two copies marked "Extra Public Copy," pursuant to the Commission's March 22, 1996 Public Notice regarding proceedings implementing the Telecommunications Act of 1996.

Respectfully submitted,

Barbara K. Gardner

Barbara K. Gardner

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL C... ...ICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Closed Captioning and Video Description of Video Programming	)	
	)	MM Docket No. 95-176
Implementation of Section 305 of the Telecommunications Act of 1996	)	
	)	
Video Programming Accessibility	)	

COMMENTS OF
THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

Norman P. Leventhal
Barbara K. Gardner
John D. Poutasse

Leventhal, Senter & Lerman
2000 K Street, N.W., Suite 600
Washington, D.C. 20006
(202) 429-8970

Its Attorneys

February 28, 1997

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SUMMARY

For years, MPAA member companies have voluntarily undertaken substantial efforts to close caption their video product, because of the significant benefits that captioning offers to the hearing disabled community. In implementing Section 305 of the Telecommunications Act of 1996 so as to maximize the amount of captioned programming available to the public, the Commission must, however, balance achievement of the statute's laudable goal with consideration for the practical, technical and economic impediments to captioning faced by MPAA members and other program owners.

Because of these impediments, very gradual transition periods for the implementation of captioning are necessary: specifically, ten- and fifteen-year schedules for the captioning of "new" and "library" programming, respectively, are entirely warranted. Given the sheer volume of library programming in existence and the fact that some cable program services are comprised entirely of older library product, the Commission's captioning rules should require that no more than 50% of such programming aired contain captions. Furthermore, compliance should be calculated based on the number of hours of library programming actually shown annually by program providers (such as broadcast licensees and cable operators), not on unexhibited "vault" programming held either by such providers, or by program owners.

Gradual transition measures are needed due to market-based industry distribution practices for video programming. A previously captioned video program generally must be recaptioned, at considerable expense, for each successive release window (such as pay-per-view, network broadcast, broadcast syndication, or premium or basic cable), as well as when the program is re-edited for other purposes. Furthermore, since program licensing agreements currently in effect do not contemplate captioning and its attendant costs, to attach a captioning requirement after the fact alters their entire

economic basis. For example, MPAA estimates that the cost of captioning a 120-episode one-hour television series already being exhibited by 150 broadcast stations would total some $1.8 million; multiplied by 30 (the number of such series in the library of a typical MPAA member company), the cost of captioning television series already under contract could escalate to more than $55 million. This compares to an estimated $14 million for captioning the same amount of programming if FCC rules contained appropriate flexibility.

For this reason, the Commission should exempt from captioning requirements all contracts between program owners and providers in effect on the date the Commission enacts its captioning rules. The Commission's proposed exemption is far too narrow, and would not effectuate the statutory mandate to exempt contracts that are inconsistent with captioning.

Program providers, not program owners or producers, should be solely responsible for compliance with closed captioning rules. Not only does the FCC not have jurisdiction over owners and producers, but under the contemplated complaint-based enforcement system, holding program providers responsible will best ensure compliance with, and facilitate enforcement of, the captioning rules.

The conversion to digital technologies may give rise to alternate means of compliance with captioning requirements. Therefore, separate captioning requirements and transition schedules should be adopted for digital television, and the Commission should revisit these schedules for all distribution media if technological advances render compliance unworkable. Moreover, since any reduction in current levels of federal grants will call into question the ability of program owners and producers to comply with any transition schedules adopted, these schedules should also be revisited if such grants are significantly reduced.

Finally, all short-form programming of 15 minutes or less duration should be exempt from the Commission's captioning rules, because of the economic burden of captioning these materials.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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	)	MM Docket No. 95-176
Implementation of Section 305 of the Telecommunications Act of 1996	)	
	)	
Video Programming Accessibility	)	

COMMENTS OF
THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

The Motion Picture Association of America, Inc. ("MPAA"), pursuant to Section 1.415 of the Commission's Rules, hereby comments on the Commission's Notice of Proposed Rulemaking, FCC 97-4 (released January 17, 1997) ("NPRM"), in the above-captioned proceeding.

I. Introduction

MPAA is a trade association representing the major producers and distributors of theatrical films and entertainment programming for television, cable, home video and other delivery systems. Its members, which include seven of the largest U.S. producers and distributors of theatrical motion pictures, television programming and home video entertainment, have captioned literally thousands of titles of video programming.[1] MPAA therefore is uniquely positioned to comment on the Commission's proposed closed captioning rules.

As noted in its comments filed in response to the Commission's Notice of Inquiry in this proceeding,[2] MPAA agrees fully with the Commission's finding that closed captioning offers significant benefits to a large segment of the American public.[3] MPAA further supports the Commission's current effort to balance achievement of the laudable goal of maximizing the amount of captioned video programming available to the public with consideration for practical, technical and economic impediments to captioning. In this spirit, MPAA herein offers suggestions for a clear and workable regulatory regime that will implement Congress' objectives.

II. Program Providers Should Have Sole Responsibility For Compliance With The Commission's Closed Captioning Rules.

A. The FCC Correctly Concluded That Program Owners And Producers Should Not Be Responsible For Compliance.

MPAA supports the Commission's conclusion that the owners and producers of video programming should not be charged with responsibility for compliance with the Commission's closed captioning rules. First and foremost, Section 713 of the Communications Act of 1934, as amended ("Section 713"), cannot be read to so dramatically extend the Commission's jurisdiction

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1 MPAA member studios include Buena Vista Pictures Distribution, Inc. (Disney); Sony Pictures Entertainment Inc.; Metro-Goldwyn-Mayer, Inc.; Paramount Pictures Corporation; Twentieth Century Fox Film Corporation; Universal Studios Inc.; and Warner Bros.

2 Closed Captioning and Video Description of Video Programming, Notice of Inquiry, 11 FCC Rcd 4912 (1995) ("NOI").

3 Comments of MPAA at 2-3 (March 15, 1996).

to encompass previously unregulated program owners. The statute itself does not explicitly confer on the Commission, and the legislative history of Section 713 makes clear that Congress did not intend to confer, jurisdiction over program owners. Rather, Congress merely recognized that captioning at the production stage is often the most economical and efficient means of compliance with the closed captioning requirements.[4] Moreover, foreign program owners not established in the United States clearly are beyond the Commission's jurisdiction.

Second, holding program owners responsible for compliance with the captioning rules would require the FCC to parse complex contractual relationships to determine, in each instance of a claimed captioning violation, which of several entities holding concurrent rights to a particular video product is responsible for the violation. In MPAA's view, this is an administrative burden of major significance, one that could cripple FCC efforts to enforce its closed captioning rules. Although it is generally not difficult to identify the ultimate "owner" of a program, namely, the copyright holder, that owner may have licensed the distribution rights to the program to separate entities for each of the various release windows (e.g., theatrical, video, pay-per-view, DBS, network broadcast, broadcast syndication, premium cable and basic cable), for various geographical regions, for various time periods, or for myriad combinations of these elements. As a result, if the Commission were to hold program "owners" responsible for ensuring compliance with the captioning rules, a considerable amount of time and effort would be expended needlessly pursuing and reviewing distribution contracts, in an effort to identify the entity ultimately responsible for failing to caption a particular version of a given program, distributed at a particular time and place in a particular format. Such a result clearly would

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[4] H.R. Report 104-204, 104th Cong., 1st Sess. (1995) ("House Report") at 114.

weaken the Commission's ability to assure adherence to its captioning rules, and to implement Congress' intent.

Rather than attempt to extend its jurisdiction over program owners, the Commission instead should permit the programming contract negotiation process to allocate responsibility for ensuring that programs are captioned as necessary to comply with the rules. Such an approach has proven entirely workable in enforcing the children's commercial limits imposed by the Children's Television Act of 1990: under the Commission's regulatory regime, individual broadcast licensees and cable television operators are held responsible for compliance, but these program providers often require their programming suppliers to certify or warrant that the product, as delivered, complies with the FCC's commercialization rules.

A similar approach in the closed captioning context will avoid the introduction of market distortions that could ensue among various types of program owners if such owners were held responsible for compliance with the Commission's rules. For example, as the Commission has recognized, enhanced demand for closed captioned programming will result in many program providers' incorporating captioning as a delivery requirement in program supply contracts.[5] However, in some cases, distributors may want the option of purchasing less expensive, uncaptioned programming from newer or smaller program owners, and captioning the programming themselves. Were program owners held responsible for ensuring that video programming is closed captioned, these small or new program owners might be forced out of the market if their ability to offer programming to program providers were conditioned on government requirements to caption that programming, thereby reducing the diversity of video programming available to the public.

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5 NPRM at 18, ¶30.

B. Program Providers Should Be Solely Responsible For Compliance With The Commission's Closed Captioning Rules.

The primary goal of Section 713 is to increase the availability of closed captioned programming to consumers. Generally, it is "program providers," as defined by the Commission (i.e., broadcasters, cable operators, and other entities that deliver video programming directly to a customer's home), that can best ensure that persons with disabilities will enjoy the benefits of closed captioned programming, since it is they who select, contract for, schedule and actually transmit video programming directly to customers. In contrast, even when a program owner supplies a captioned product to a provider, that program owner has no control over whether the captioning is actually transmitted to the program provider's customers.

Holding program providers responsible for compliance with captioning requirements also is more efficient in light of the complaint-based enforcement system that the Commission proposes to adopt. Consumers have no ongoing commercial relationship with program owners, and would find it extremely difficult -- even assuming that they could successfully identify the correct "owner" of the rights to the particular exhibition of the program that is the basis of their complaint -- to contact these entities. In fact, consumers can readily identify only the entity with whom they actually deal -- the program provider. This direct link between consumers and programming providers will best ensure compliance with the Commission's closed captioning rules.

With respect to multichannel video programming distributors ("MVPDs"), the compliance determination should be required to be made with respect to each individual channel, rather than on a system-wide basis (i.e., each individual program service should be required to comply).

Otherwise, during the transition period MVPDs could contract for entire program services that are uncaptioned, and then require 100% captioning of other services as a condition of carriage.

Finally, a system whereby both program owners and program providers would be jointly responsible for compliance with the Commission's closed captioning requirements would be unworkable. At best, joint responsibility would breed confusion -- neither consumers nor the Commission would know to whom to address their complaint in any given situation. At worst, both parties could seek to disclaim responsibility for captioning. In either case, enforcement of the Commission's closed captioning rules would suffer, to the ultimate detriment of the American public.

III. The Commission Should Adopt A Ten-Year Transition Schedule For The Captioning Of "New" Non-Exempt Video Programming.

A. Captioned Programming Must Be Recaptioned Frequently For Each Subsequent Video Market Or Day-Part, At Substantial Cost To Program Owners and Distributors.

MPAA supports the Commission's conclusion, based on limitations in the availability of captioners, captioning costs, and pre-existing contracts, that it would be impractical to require the immediate captioning of all video programming first published or exhibited after August 8, 1997, the statutorily mandated effective date of the Commission's rules (so-called "new" video programming). However, there is another factor that makes a lengthy transition period imperative: **the necessity of, and costs associated with, recaptioning previously captioned programming when it is reformatted to enter new distribution streams**. For example, movies and television programs are captioned initially in their first video venue (normally home video for movies, and first run syndication or network distribution for television programs).

Then, for each successive product market, including repeated broadcast syndication and cable network exhibition, a video program requires reformatting and, hence, must be recaptioned.

Such reformatting often occurs because different audiences require different video and audio content. For example, family-oriented channels employ different language editing standards than channels that attract larger adult audiences, and the two types of channels therefore will require that the same film segment be edited differently. Even within the same program format, editing for language or content may vary to account for local or regional differences.

Reformatting also is required to accommodate the differing commercial content requirements of different release windows and day-parts. For example, premium cable service versions of a program do not require commercial breaks, while broadcast television and advertiser-supported cable networks not only are dependent on advertising, but have different requirements as to commercial breaks depending on the day-part in which a program will air. Even within a given video market, individual licensees may have different formatting requirements which necessitate recaptioning.[6] In all cases, market forces determine the amount and placement of commercial content.

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6 For example, in several instances Turner Broadcasting shares movie rights with three of its networks, TBS, TNT and Turner Classic Movies (TCM), each of which will require a different format of the same movie. For airing on TNT, the movie must be formatted to include breaks for local commercials inserted by the cable operator, while TCM (a non-commercial-supported service) generally runs features in their entirety with few or no breaks. TBS, on the other hand, will air a shorter version of the movie than either TNT and TCM, and does not have to insert cable operator commercials. In addition, TBS and TNT may each have a second version with a different air time in order to accommodate other program scheduling needs. In this example, each of the five versions would have to be captioned or recaptioned to meet the differing format requirements.

In short, the format requirements peculiar to each subsequent licensing of a program may require that the program be re-edited, compressed or expanded, or that the text of the audio portion of the program be changed. In each such instance, recaptioning will be necessary, at a minimum to realign the captioning with the newly edited audio and video. When the length of the captioned program is compressed or expanded, in most cases the existing captioning will be rendered useless, and the insertion of costly new captions will be required.[7] Thus, rather than requiring only the initial captioning of video programming, compliance with the Commission's rules will entail repeated recaptionings over the life of each video product.

The costs of such recaptioning will depend, of course, upon the extent to which the individual program has been reformatted. Under current market conditions, the average cost of recaptioning is approximately one-half of the cost of the original captioning, plus the cost of creating new encoded masters, physically transporting the tape or retransmitting the recaptioned programming by satellite, creating a copy of the dubbing master or an off-line cassette, and reshipping the dubbing master back to the program provider. As shown in the Attachment hereto, such costs typically exceed $3,000 for a one-hour episode of a television series.

B. Any Reduction In Federal Grants For Closed Captioning Will Reduce The Amount of Captioned Programming Available To The Public.

The frequency and cost of recaptioning become all the more significant in light of the uncertainties surrounding federal grants for closed captioning. As the Commission has noted,

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7 See NPRM at 15, ¶ 22. Only where the degree of compression or expansion is slight may the existing captions be commensurately "vari-speeded" (e.g., expanded or contracted).

federal grants provided by the Department of Education have financed approximately 40% of the cost of all captioned video programming.[8] It is therefore clear that the economic viability of captioning some individual works for television distribution is intimately linked to the availability of federal grants. Because decisions to sell or acquire programming to air are based on that programming's perceived economic viability in the marketplace on a standalone basis, taking into account each individual program's expected audience reach, it is clear that if federal funding is significantly reduced, some video programming will not be exhibited because it will not be economical to do so. For example, programs of high quality but limited distribution are the types of programs that are least likely to be captioned in the absence of adequate grant funds.

As a consequence, the closed captioning rules should require the Commission to revisit the transition schedule ultimately adopted if federal grant levels are significantly reduced. Failure to revise the transition schedule under such circumstances would inevitably force program providers and owners to eliminate from their programming schedules those programs for which the cost of captioning would represent an uneconomical expenditure when compared with anticipated revenues from that program. The consequent reduction in the diversity of programming available to the public is a result Congress specifically did not intend.[9]

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[8] NPRM at 9-10, ¶ 10. In 1996, the U.S. Department of Education provided $12.1 million in federal closed captioning grants for films, television programs, film distribution and research.

[9] House Report at 114.

C. A Ten-Year Transition Period For Captioning New, Non-Exempt Video Programming Is Warranted.

Given the costs associated with captioning and recaptioning video programming, and the uncertainties surrounding the availability of future federal grants, MPAA believes that a ten-year transition period for the captioning of new, non-exempt video programs is appropriate. Under this schedule, three years after the effective date of the Commission's rules, 25% of all new, non-exempt programming would be required to be captioned; 50% after five years; 75% after seven years; and 100% after ten years.

During this transition period, program providers and owners, not the Commission, should determine which programs or categories of programs will be captioned when, and in what sequence. Assuming adequate funding, market-based contractual arrangements, as influenced by public demand for captioned programming, will adequately ensure that a sufficient variety of types of programs, including public interest programming, will be captioned in a timely manner. Moreover, mandatory captioning of select types of video programming will necessarily divert scarce financial resources from the captioning of other programs for which consumer interest and demand is greater.

D. Compliance With Transition Schedule Percentages Should Be Measured Annually, To Provide Maximum Scheduling Flexibility.

The determination that a program provider has achieved compliance with a particular percentage threshold within the transition schedule should be calculated as the percentage of captioned hours delivered to consumers on an annual basis, rather than per month or per week.

Annual measurements are appropriate because the volume of new programs aired is not consistent from week to week or from month to month, but varies according to the programming season. On many distribution media, a large number of specials with limited repeat potential, costly to caption, may be aired in one season or another. On broadcast television, more new programs are aired during the fall and spring rating seasons than at any other time during the year.

Because measuring a program provider's compliance with the captioning rules on a per week or per month basis would not take these seasonal variances into account, and would provide an incomplete or inaccurate assessment of a program provider's closed captioning efforts, calculating compliance as a percentage of captioned hours delivered to consumers on an annual basis is entirely justified. Measuring compliance on this basis also would permit needed flexibility in scheduling, and allow creative sales to be made in an environment of fluid contractual processes.

E. The Commission's Closed Captioning Rules And Timetables Should Apply To Current Technologies Only.

The Commission correctly recognizes that the conversion to digital technologies may provide alternative means to caption video programming that may conflict with the rules adopted in this proceeding.[10] To accommodate such advances, separate captioning requirements, and a separate schedule for their implementation, should be adopted for digital television ("DTV") after the DTV transition schedule and simulcasting requirements have been finalized. With respect to all distribution media, the Commission should be prepared to revisit its transition schedule in the

[10] NPRM at 24, ¶48.

event that technological advances render compliance unworkable or, conversely, the Commission's closed captioning rules obsolete.

F. A Program Provider That Reformats Captioned Programming Should Not Be Required To Recaption That Programming If The Applicable Transition Schedule Percentages Have Been Met.

MPAA represents its members as program producers, not program providers. Nevertheless, MPAA believes that where program providers themselves edit a captioned program to add local content or meet other local requirements, it would be inappropriate to require these providers to recaption such programming themselves where they have already satisfied the currently applicable captioning percentage requirement. In fact, mandatory recaptioning under such circumstances would impose an unnecessary cost on program providers and would discourage the editing of programming to meet local standards, or the creation of valuable programming such as local cut-ins to network programming.

Furthermore, under a complaint-based captioning enforcement regime, compliance with a mandatory recaptioning requirement would be almost impossible to monitor, since viewers will not know whether the program provider received a given program captioned or uncaptioned, or whether the provider has edited the program. The Commission should refrain from micromanaging the captioning process where market forces, coupled with the Commission's rules and transition timetables, will adequately ensure that an ample supply of captioned programming will reach the viewing public.

IV. A More Flexible Regulatory Regime Should Apply To Library Programming.

A. The Basis For Defining Library Programming Should Be The Point In Time When A Work Is First Publicly Distributed In Its Original Form In Any Medium.

Section 713 distinguishes between new programming and programming that is "first published or exhibited" prior to August 8, 1997 (i.e., library programming).[11] In defining the scope of programming that constitutes library programming, the phrase "first published or exhibited" should be interpreted as the point in time when the work was first publicly distributed in its original form in any medium, including those not subject to Commission jurisdiction, such as theatrical films and home videos. Using this common-sense interpretation, reformatting a previously published or exhibited program for a different distribution medium, or adding introductory "filler" or other interstitial matter, would not transform the program into "new" programming if it was first distributed or exhibited prior to August 8, 1997.

Furthermore, once a "new" program is ten years old (i.e., ten years from the first distribution date of a program first distributed or exhibited after August 8, 1997), it should be deemed to constitute library programming, and therefore subject to less stringent captioning requirements. This further clarification is necessary because in many instances, the owner of such a program already will have captioned the program at least twice (e.g., for network distribution, and then for subsequent syndication), and often three or more times. Moreover, as new programs age, their value steadily diminishes over time, eventually making the burden of

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[11] 47 U.S.C. § 613(b) (1996).

reformatting and recaptioning uneconomical even if they were captioned on initial release. Indeed, once a new program has been on the market for a period of ten years, licensing arrangements requiring reformatting are likely to be for quite limited distribution; hence, the cost/benefit equation for recaptioning the program will have changed dramatically. Imposition of a de facto mandatory recaptioning requirement in these circumstances often would serve to keep diverse programming away from the public.

B. If Transition Schedule Percentages For Library Programming Are Adopted, They Should Be Based On Programming Actually Aired By Programming Providers, And In Any Event Should Not Exceed Fifty Percent Of Each Provider's Total Library Programming.

As MPAA observed in its March 15, 1996 comments on the Commission's NOI in this proceeding, the motion picture industry has voluntarily undertaken substantial efforts to caption its product, both in response to the increased accessibility to closed captioned programming created by the Television Decoder Circuitry Act of 1990, and in recognition of the substantial benefits that closed captioning provides to persons with hearing disabilities.[12] Today, nearly all widely distributed motion pictures produced and distributed by MPAA member companies are closed captioned for distribution over broadcast television, home video and cable television following their theatrical release. In addition, thousands of titles initially released prior to this period have also been captioned.

Currently, more than 6,000 closed captioned titles have been distributed, and the number continues to increase without government captioning requirements of any kind. Thus, in MPAA's

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[12] Comments of MPAA at 3-5.

view, the marketplace will continue to create incentives to caption library programming in sufficient quantity, and there is no need for the FCC to regulate the captioning of such product.

But if the Commission determines otherwise, it has without doubt correctly concluded that under any transition timetable, it would be inappropriate to require captioning of all library programming.[13] Not only does the clear language of the statute not contemplate mandatory captioning of all previously distributed programming, but such a requirement would be wholly unworkable given the volume of programming product in the hands of both program owners and program providers.[14]

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[13] NPRM at 27, ¶ 57.

[14] In the context of programming first published or exhibited before August 8, 1997, long running television programs in syndication pose a particularly complex problem. There are hundreds of thousands of dubs of uncaptioned programming material in the marketplace which would have to be replaced, at tremendous expense. As the Attachment hereto demonstrates, if a given uncaptioned library program or program series can be captioned at the time it is being prepared for re-release (i.e., in a release window occurring naturally in the program's life cycle), captioning costs can be relatively reasonable, and an orderly transition to the captioning of library product can be made. In the example detailed in the Attachment, a television series with 120 one-hour episodes could be captioned at a cost of under $500,000 if the captioning is performed when the series is being distributed in a broadcast syndication window, or $14.4 million for 30 such program series. But if every tape already in program providers' hands were required to be recalled and captioned piecemeal, the costs of doing so almost quadruple, reaching $1.8 million for the same series (plus $30,000 in shipping costs), and almost $56 million (plus shipping) for 30 such series, the estimated typical number of series licensed by an MPAA member company. The disruptive effects of such requirements on the normal functioning of the video programming industry are obvious. They can, however, be reduced if MPAA's below-described suggestions regarding percentage and timetable requirements for library programming, and exemptions for existing contracts, are adopted.

In addition, just as new programming must be recaptioned at substantial cost when it is reformatted for subsequent video markets (as detailed above), so must previously captioned library programming undergo recaptioning in analogous circumstances. As to uncaptioned library product, the costs of first-time captioning of certain types of such product, such as classic video programming being reissued for limited distribution, may well exceed the benefits of captioning that programming. For all these reasons, if the Commission were to require that all library programming be captioned before it can be re-exhibited, large segments of such programming would never be distributed again because it would be uneconomical to do so.

Should a percentage requirement be adopted for library programming, compliance should be calculated based on the number of hours of such programming <u>actually aired by program providers after August 8, 1997</u>, not on "vault" programming held by either program owners or program providers that is not exhibited after that date. Requiring the captioning of unexhibited vault programming would be economically inefficient, divert scarce financial resources that otherwise would be used to caption exhibited programming, impose an undue economic burden on program owners and producers, *and provide no benefit to hearing-impaired consumers in any case*.

In light of the sheer volume of library programming in existence, and the prohibitive costs that its captioning would entail, MPAA believes that *at most, 50% of library programming aired should be required to be captioned.* Any higher percentage requirement, MPAA firmly believes, will result in reduced programming variety. Moreover, a relatively long transition period is warranted in light of the fact that some program networks, such as Turner Classic Movies or American Movie Classics, are comprised almost entirely of older library product, very little of which is closed captioned. Consequently, MPAA suggests that the implementation schedule for captioning library programming should encompass a time period longer than that suggested for new programming, specifically, a fifteen-year period. MPAA further recommends that percentage captioning benchmarks be evenly spaced over this period, so that within three years of the effective date of the Commission's rules, 10% of library programming actually aired by each program provider must be captioned; 20% after six years; 30% after nine years; 40% after twelve years; and 50% after fifteen years.

As with new programming, any library programming transition schedule should apply to current technologies only, and compliance should be calculated as a percentage of annual hours delivered by program providers to consumers.[15] As noted above, an MVPD's compliance should be calculated on a per-channel rather than a system-wide basis.

V. Interstitials, All Other Short-Form Programming And Works In The Public Domain Should Be Exempt From The Closed Captioning Requirements Based Upon Economic Burden.

MPAA supports the Commission's conclusion that interstitials and promotional announcements should be exempt from the Commission's closed captioning rules, but disagrees that these types of announcements should be required to display their basic message in textual or graphic form to qualify for the exemption. Promotional announcements, intros and outros do

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15 Annual calculations are warranted because of variations in the levels of captioned programming that occur in shorter time frames. For example, cable channels frequently run "spotlights" that highlight all of the episodes of an old television program: in the event that the spotlighted program is uncaptioned, that cable channel's monthly or weekly compliance percentage would be uncharacteristically low.

often provide their principal information in textual form, making closed captioning unnecessary. But with respect to interstitials that are not primarily textual, such as fillers, bumpers, wraparounds and other short-form programming, such materials often have limited repeat value, and therefore are not cost-effective to caption.

MPAA further suggests that for ease of administration, all material of fifteen minutes' duration or less should be presumed to qualify as exempt short-form programming. An exemption for all interstitials and other short-form programming of fifteen minutes or less will be easier for viewers to monitor for compliance than exemptions based on audience share, market size, programming budgets and other similar considerations. Indeed, utilizing these more complicated criteria would undermine, rather than advance, the complaint-driven enforcement process. In any event, MPAA has seen no demand that the Commission step in and substitute government fiat for market forces with respect to the captioning of short-form programming

Finally, MPAA suggests that works in the public domain (generally, motion pictures created before 1922, and other works created before 1947) also should be exempted from the closed captioning rules. In light of the limited number of such works, captioning would generate no economic benefit to program owners, while forcing them to incur a not insignificant economic burden. Moreover, in the case of theatrical films, the added costs of captioning public domain and other "orphan" works (those whose ownership is unknown or uncertain) would discourage the undertaking of vital efforts to save these works. In MPAA's view, the restoration and preservation of such films should be encouraged, not made more difficult.

VI. The Commission Should Broaden The Existing Contracts Exemption.

The Commission's proposal to exempt from the closed captioning requirements only contracts that affirmatively prohibit captioning, or that contain specific language arguably inconsistent with captioning, is unduly narrow. In fact, MPAA members are unaware that any such contracts exist.

Therefore, in order to effectuate the statutory mandate to exempt existing contracts that are "inconsistent with" captioning, MPAA strongly urges that all library programming licensed pursuant to contracts in effect on the date of enactment of the Commission's captioning rules[16] should be exempt from captioning requirements. Self-evidently, were the Commission's future captioning timetables for new and library programming known when these contracts were entered into, or had captioning been a delivery requirement in such contracts, the compliance costs thereof would have been a factor in the contract negotiations. To attach a captioning requirement to such contracts after the fact, irrespective of the party the Commission chooses to burden with that requirement, alters their entire economic basis.

Moreover, in many program licensing agreements, most of the value of the contract is realized in its early stages, and the large up-front payment that is made for the programming reflects this economic reality. There may currently be too little value left to justify the costs of returning the work for captioning, captioning it, and retransporting or retransmitting the newly captioned work. It would under these circumstances be patently unreasonable and unworkable to

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[16] Section 713(b) of the Communications Act requires these rules to be in place within 18 months of the date that the Telecommunications Act of 1996 was enacted, i.e., by August 8, 1997.